Jim Slaughter, Certified Professional Parliamentarian & Professional Registered Parliamentarian
336-378-1899(W) 336-378-1850(F) web site – www.jimslaughter.com

Statutes and Procedures of Community Associations

Jim Slaughter, JD, PRP

Editor's note: Jim Slaughter previously authored "Community Associations and the Parliamentarian," which appeared in the First Quarter 2000 NP. That article was an introduction for parliamentarians to the language and disputes of community associations. This follow-up article explores the statutes and procedures governing community associations.

As a parliamentarian, you will likely be called upon at some point to assist a community association. According to the Community Associations Institute ("CAI"), over 51 million Americans live in association-governed communities.[1] Some 9,000–11,000 new community associations are formed each year, and more than four in five housing starts during the past 5-8 years have been built as part of a community association. Given such statistics, the number of community association meetings must be astronomical—think of all those associations multiplied by one annual meeting, occasional special meetings, monthly board meetings, and regular meetings of committees. As a result, it is worth the effort to learn what community associations are (and are not), how they are organized, and some of the unusual statutes and procedures that govern them.

What Are Community Associations?

There are many different types of community associations, and terms can vary between states. For instance, a "common interest development" ("CID") in California would likely be called a planned unit development ("PUD") in Georgia, or a "homeowners association" ("HOA") in North Carolina.[2] The umbrella term "community association" simply means a real estate development in which the owners are bound to membership in an organization by a set of governing documents that require adherence to a set of rules and, often, the payment of assessments. This term encompasses homeowners associations, condominiums, cooperatives, planned unit developments, and townhouses. Membership in the community association is automatic upon purchase of the property. Unlike other associations parliamentarians often serve, community associations are *not* voluntary.

A parliamentarian assisting such organizations should have at least a general understanding of the differences between types of community associations. In a "condominium" a person owns an individual unit and is a joint owner of the common elements. (As a result, the condominium association does not own any common property, even though it exerts powers over it.) In a "homeowners association" a person owns an individual unit, while the homeowners association owns the common areas. In a "cooperative" a corporation owns all units and common areas, and a lease gives rights of occupancy to individual units.

The term "property owners association" is at times loosely used in place of "community association." More properly, however, the phrase "property owners association" is restricted to an association composed of vacant lots, rather than finished dwelling units. Large community associations can be layered, with a "master" association comprised of "subassociations" of condominium, homeowner, or property owner associations.[3]

Origins and Uniform Acts

Because community associations are largely creatures of statute, specific community association issues will vary from state to state as the result of variations in state statutes. To complicate matters further, whether or not a specific statute applies to a community association may depend on when the association was formed. (State statutory schemes often provide that some or all of

the statutes do not apply to communities created before adoption of the statute.) Despite these potential differences, a general understanding of the genesis of these associations and governing statutes is useful.

The concept of community associations is not new and can be traced to the 1800s. However, use of this type of ownership was fairly limited until 1961, when the Federal Housing Administration (FHA) began providing mortgage insurance and Chicago Title and Trust began offering title insurance for condominiums. By 1967 every state had adopted some form of condominium statute.[4] In an effort to bring uniformity to the many state statutes, the National Conference of Commissioners on Uniform State Laws published the Uniform Condominium Act ("UCA") in 1977. Subsequently, the Uniform Planned Community Act ("UPCA") was created in 1980, with the intent of bringing the same type of uniformity to laws regarding other planned communities. The broader Uniform Common Interest Ownership Act ("UCIOA") was promulgated in 1982 (and amended in 1995) with the intent of superseding the UCA, UPCA, and the Model Real Estate Cooperative Act.[5]

These uniform acts—the "UCA," the "UPCA," and the "UCIOA"—are often referenced in the community association world. However, it is important to note that none of these documents bind anyone. As "uniform" acts, the Conference intended for states to use these models when writing statutory schemes, but none of the uniform acts are binding by themselves. At present, many states have adopted some version of a condominium act and also some version of either the UPCA or the UCIOA. Although the UCA, UPCA, and UCIOA are simply authoring guides, they are worth reviewing in that many unusual procedures in community associations have their origins in these statutory models. All three model acts are available online.[6]

State Statutes

Without question, parliamentarians must be aware of the actual state statutes governing a particular association. Statutory wording frequently alters the standard parliamentary response to a given situation.

For instance, statutes often modify the general rules concerning quorum. As with many non-profit corporation statutes, the UPCA and UCIOA provide that if a quorum is established at the beginning of a meeting, the quorum remains regardless of how many members leave: "Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast [20] percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting."[7] Many states, however, have altered this uniform language even further. For instance, the North Carolina Condominium Act quotes the UPCA language verbatim.[8] However, the North Carolina Planned Community Act reduces the required percentage to ten percent (10%).[9] The N.C. Planned Community Act then provides that in the event a quorum is not present at a meeting, the meeting can adjourn to another date, at which time the quorum requirement "shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum."[10] This quorum-reducing provision continues from meeting to meeting "until such time as a quorum is present and business can be conducted.[11]

State statutes also often tinker with the quorum for board meetings. Under general parliamentary law, the quorum for a board meeting is a majority ("more than half") of the membership.[12] The UCIOA (§ 3-109(b)) and some state statutes define the quorum of a planned community executive board as fifty percent (50%) of the members—a number which is different than and may be smaller than a majority, depending on the number of members.[13] In addition, slight differences in statutory wording can alter board

Reprinted from the National Parliamentarian®, *First Quarter 2005*

quorum requirements depending on whether quorum is based on the number of directors in office or the number of director positions (as these numbers may be different).

Further, some community association statutes remove quorum requirements altogether for certain actions. For instance, the UPCA mandates a "budget ratification meeting" at which the proposed budget is presented to unit owners. "Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, *whether or not a quorum is present*."[14]

Governing Documents

In addition to statutory language, parliamentarians serving community associations must be aware of multiple governing documents. Governing documents for community associations may include: (1) Covenants, Conditions and Restrictions, (3) corporate charter, (4) constitution and/or bylaws, and (5) parliamentary authority.

Covenants, Conditions and Restrictions (Declaration). The Covenants, Conditions and Restrictions (CCRs) (sometimes referred to as the "Declaration," the "Restrictions," the "Declaration of Condominium," or the "Master Deed") may be the most important document governing a community association. CCRs are created prior to the development of the community association and are recorded with other real estate documents in the same manner as a deed. The purpose of the CCRs is to establish rules for living within the association. Although CCRs vary by association, such restrictions may cover anything from forbidding pools and outbuildings to detailing appropriate paint colors and flowers. CCRs may also contain restrictions as to the board's size and method of election as well as meeting procedures.[15]

CCRs *cannot* be violated. After all, the CCRs are a legal and binding contract by anyone who chooses to purchase property within the planned community. Also, unlike statutes which often only provide minimum standards, CCRs are typically worded in terms of what "must" or "shall" be done. As a result, parliamentarians serving community associations *must* be aware of the contents of the CCRs (and any subsequently adopted and filed "supplemental Declaration" or "amendment to Declaration" that may alter the original provisions).

Parliamentarians should also be aware of the difficulty in amending CCRs. Some CCRs require a 100% vote of all unit owners to amend (an almost impossible requirement). Other acts provide for a floating vote requirement depending on the nature of the amendment. While an amendment that changes the boundaries or uses of a unit may require the unanimous consent of all unit owners, other types of amendment may require approval by some other percentage of the owners.[16]

Due to these high vote requirements, amendments to CCRs are often adopted *outside* of meetings by agreements, rather than votes. For example, the Uniform Planned Community Act ("UPCA") and the Uniform Common Interest Ownership Act ("UCIOA") provide that the declaration "may be amended only by vote *or agreement* of unit owners of units to which at least [67] percent of the votes in the association are allocated . . . ."[17] Similar provision is made for terminating a planned community, which can be accomplished "by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated."[18] Certainly, such votes could be taken at an association meeting. However, potential problems at such a meeting are legion: even a unanimous vote by those at the meeting might not be enough to adopt the motion (because the vote is based on the total number of unit owners and not those attending the meeting); quorum rules must be followed; proxies must be recognized; and motions raised at the meeting may further complicate the issue. Rather than attempt such a vote, a simpler solution is to opt for avoiding a meeting altogether. Instead, obtain the "agreement of unit owners"

by canvassing the association and obtaining the written consent of the required percentage of members.

Corporate charter. Not all community associations incorporate. For instance, in Virginia the practice is not to incorporate condominium associations on the theory that the condominium statute provides all necessary protections and guidelines.[19] If incorporated, the corporate charter (sometimes called "articles of incorporation" or "certificate of incorporation") establishes the association as a corporation (either nonprofit or for-profit) and contains the information needed for incorporating in that state.

Constitution and/or bylaws. The constitution and/or bylaws contain the basic rules relating to the community association as an organization. *RONR* examines the composition and interpretation of bylaws in detail.[20] The bylaws cannot conflict with applicable statutes, the CCRs, or the corporate charter.

Parliamentary Authority. The parliamentary authority is the manual of parliamentary law adopted as rules of order by the community association (often in the bylaws). A few states provide specific statutory guidance to community associations on what meeting procedures should be followed. For instance, a Hawaii statute governing planned community associations provides that "All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised."[21] Similarly, an Oregon statute provides that for planned communities, "Meetings of the association and the board of directors shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association."[22] A California statute governing community associations is somewhat less specific, providing that: "Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt."[23]

In contrast to these specific provisions, most states have no statutory language on the procedures to be followed by community associations. In the absence of a parliamentary authority prescribed in the bylaws, the association may adopt a parliamentary authority for a meeting with previous notice and a two-thirds vote (or without notice, by a vote of a majority of the entire membership).[24]

Governing Authority Conflicts

While many procedural issues in community associations can be resolved by resort to a parliamentary authority, more complicated problems often arise due to conflicts among governing authorities. At times, there are even conflicts within the applicable statutes themselves. For instance, the UPCA provides that "the [community] association shall be organized as a profit or non-profit corporation [or as an unincorporated association]."[25] As a result, it is possible for state statutory provisions governing planned communities to conflict with similar provisions for profit or non-profit corporations, such as quorum, notices of meetings, votes required, or proxies. The UCIOA attempts to deal with this issue by noting that, "The principles of law and equity, including the law of corporations [and unincorporated associations] . . . supplement the provisions of this [Act], except to the extent inconsistent with this [Act]."[26]

In addition to all such pertinent statutes, community association parliamentarians must also be aware of the wording of the multiple governing documents discussed above as well as the potential for conflict between documents, including the:

- declaration; declaration of covenants, conditions, and restrictions (CCRs); declaration of condominium; master deed
- supplemental declaration
- articles of incorporation (for-profit or non-profit); corporate charter; certificate of incorporation

Reprinted from the National Parliamentarian®, *First Quarter 2005*

- constitution
- bylaws (if separate from the constitution)
- parliamentary authority
- board resolutions

Conflicts between these various governing documents can at times be difficult to reconcile. Without question, some governing documents are weightier than others. For instance, the UCIOA provides as follows: "In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with the [Act]."[27] Other conflicts may be harder to reconcile. For instance, which document governs if the articles of incorporation adopted by the board conflict with the declarations adopted by the unit owners?

At times, the governing documents may delineate a hierarchy among themselves. In addition, general principles of interpretation in *RONR* may be of assistance (e.g., a general statement or rule is of less authority than a specific statement or rule and yields to it; more current documents take priority over earlier versions; when a provision is susceptible to two meanings, one of which conflicts with or renders absurd another provision and the other meaning does not, the latter must be the true meaning; etc.).[28] Unlike other disputes involving the meaning of legal documents, "intent" of the original parties may carry little weight in the association context. After all, the documents were likely drafted by or on behalf of the developer, who may be difficult to locate in older developments and whose intent may bear little relationship to the present situation.

Conclusion

With history as a guide, the number of community associations will continue to flourish. These developments represent a huge potential market for parliamentary advice. In addition, over 1.5 million volunteers serve on the boards and committees of community associations in the United States. These members would benefit from attending parliamentary classes or joining a parliamentary organization, such as NAP. However, to better serve these organizations, parliamentarians must become more familiar with the structure of community associations and the procedures that govern them.

Notes

1. All community association statistics are from the Community Associations Institute (CAI) Web site at www.caionline.org.
2. Wayne S. Hyatt, *Condominium and Homeowner Association Practice: Community Association Law (Third Edition)* § 1.06 at 13 (2000).
3. Hyatt § 1.06(c)(5) at 21.
4. Hyatt § 1.05(b) at 11.
5. *Introduction to Uniform Common Interest Ownership Act (1994)* available at Web site of the National Conference of Commissioners on Uniform State Laws (www.nccusl.org).
6. The uniform acts can be obtained online using Web search engines or through the Web site links under "Resources" at www.jimslaughter.com.
7. UPCA § 3-109; UCIOA § 3-109.
8. N.C.G.S. § 47C-3-109 (2004).
9. N.C.G.S. § 47F-3-109(a) (2004).
10. N.C.G.S. § 47F-3-109(c) (2004).
11. N.C.G.S. § 47F-3-109(c) (2004).
12. *See RONR (10th ed.)* § 40 (p. 335).
13. *See* N.C.G.S. § 47C-3-109(b) and 47F-3-109(b).
14. UPCA § 3-103 (emphasis added); *see also* UCIOA § 3-103(c).
15. The Uniform Act provides that the "declaration may contain any other matters the declarant deems appropriate." UPCA § 2-105(b).
16. UPCA § 2-117.
17. UPCA § 2-117(a); UCIOA § 2-117 (emphasis added).
18. UPCA § 2-118; *see also* UCIOA § 2-118.
19. Hyatt § 1.06(d)(2)(A) at 24.
20. *See RONR (10th ed.)* §§ 2, 56-57.
21. Haw. Rev. Stat. § 421J-6 (2003).
22. Or. Rev. Stat. § 94.657 (2003).
23. Cal. Civil Code § 1363(d)(2004).
24. *RONR (10th ed.)* § 2 (p. 17).
25. UPCA § 3-101.
26. UCIOA § 1-108.
27. UCIOA § 2-103(c).
28. *See RONR (10th ed.)* § 56 (p. 570)

Jim Slaughter, JD, PRP, CPP-T is president of the law firm of Forman Rossabi Black, P.A. He has served for the past two years as a Distinguished Faculty member of the Community Association Law Seminar of the Community Associations Institute. Jim's Web site at www.jimslaughter.com contains many articles and charts on meeting procedure.

For reprints of this and other articles from the National Parliamentarian®*, contact the National Association of Parliamentarians at (888) NAP-2929, or by e-mail at hq@nap2.org. The NAP Web site is at www.parliamentarians.org.*